

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

In re:

Verne H Leightner and Kathleen K Leightner  
Debtors

Case No.10-71138-tjt  
Chapter 13  
Honorable Thomas J Tucker

Verne H Leightner and Kathleen K Leightner

Plaintiffs

Adv. Proc. No.10- -tjt

v.

Green Tree Servicing LLC  
Defendant

**COMPLAINT TO AVOID SECURITY INTEREST IN REAL PROPERTY  
LOCATED AT 8380 CRAWFORD ROAD, SPRINGPORT MI 49284**

Debtors, by and through their attorneys, Marrs & Terry, PLLC, now come and state the following complaint:

1. Plaintiffs bring this complaint pursuant to 11 U.S.C. §506, and submit themselves to jurisdiction of this Court through Fed. R. Bankr. P §7001 and §7004.
2. Debtors filed a Voluntary Chapter 13 petition with this court on October 8, 2010.
3. The Debtors have two separate mortgages on their principle residence located at 8380 Crawford Road, Springport MI 49284 located in Jackson County. Said property is legally described as:

Township of Springport, County of Jackson, State of Michigan;

The South 545 feet of the North 1020 feet of the West ¾ of the West ½ of the Southwest ¼ of Section 27, T1S, R3W, Springport Township, Jackson County, Michigan.

Tax Id: 000-01-27-301-004-01

CKA 8380 Crawford Road, Springport MI 49284

4. The first mortgage is held by HSBC Mortgage Services and has a balance of \$203,688.00 according to the Debtors' schedules which were based on a recent credit report balance. Said mortgage is recorded at Liber 1813 Page 369, Jackson County Records. The second mortgage is held by Green Tree Servicing LLC. Said mortgage

has a balance of \$49,537.00 as evidenced by the Debtors schedules. Said mortgage is recorded at Liber 1813 Page 370, Jackson County Records.

5. The property has a value of \$165,000.00 according to Debtors' schedules and a recent market analysis.
6. In order for Defendant's mortgage to be secured by even \$1, the property would have to be of value in excess of the first mortgage and any outstanding property taxes, which is no less than \$203,668.00.
7. The Debtors are entitled to avoid the claimed security interest of Green Tree Servicing LLC as to the second mortgage on the Debtors' property under the provisions of 11 U.S.C. §506, as the Defendant's second mortgage lien is not an "allowed secured claim" as defined by the Code and applicable case law.
8. As such, the Defendant does not have a valid lien or security interest as to the second mortgage on the property at 8380 Crawford Road, Springport MI 49284 in Jackson County and should therefore be treated as a general unsecured creditor whose claim will be paid as a Class 8 creditor.
9. The interests of good faith and justice support the requested relief.

WHEREFORE, Debtors request that this Honorable court grant the requested relief to avoid Green Tree Servicing LLC's security interest and lien in the real estate located at 8380 Crawford Road, Springport MI 49284 in Jackson County as it relates to the second mortgage.

Respectfully Submitted,

Dated: October 11, 2010

\_\_\_\_/s/Tricia Stewart Terry\_\_\_\_  
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